

Message Text

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ACTION EB-11

INFO OCT-01 EUR-25 ISO-00 L-03 JUSE-00 COME-00 FTC-01

FEA-02 TRSE-00 DRC-01 RSC-01 /045 W

----- 029879

R 141606Z JUN 74

FM USMISSION BERLIN

TO SECSTATE WASHDC 3524

AMEMBASSY BONN

INFO AMEMBASSY LONDON

AMEMBASSY PARIS

UNCLAS BERLIN 1009

E.O. 11652: N/A

TAGS: ECON, ENRG, GW,

SUBJECT: BUNDESKARTELLAMT ACTIONS AGAINST OIL COMPANIES

REF: A. STATE 111877 B. BERLIN 681

1. JUSTICE DEPARTMENT OFFICIALS DAVIDOW AND BUSHNELL MAY FIND FOLLOWING USEFUL IN CONNECTION WITH THEIR FORTHCOMING TRIP TO BONN AND BERLIN (REF. A).

2. RE KARTELLAMT ORDER TO RESCIND GASOLINE PRICE INCREASE (DESCRIBED REF B), ON MAY 17 KARTELLAMT WITHDREW INJUNCTION AGAINST TEXACO AND ON MAY 19 COURT RULED IN FAVOR OF BP APPEAL AGAINST PUTTING ORDER INTO EFFECT IMMEDIATELY. COURT HEARING TO DETERMINE WHETHER KARTELLAMT ORDER AGAINST BP SHOULD EVENTUALLY BE PUT INTO EFFECT IS NOT YET SCHEDULED. MEANWHILE, KARTELLAMT INSTITUTED CASE AGAINST VOLKSWAGEN PRICE INCREASE ONLY TO WITHDRAW IT SHORTLY AFTERWARDS AND APPARENTLY ALSO WITHDREW ACTION AGAINST OIL COMPANIES ON DIESEL PRICES.

3. UNDER PRE-1972 CARTEL LAW DEFINITION OF MARKET DOMINATION (WITHOUT COMPETITOR OR NO SUBSTANTIAL COMPETITION), ONLY THREE OF 299 CASES RESULTED IN EFFECTIVE ACTION BY KARTELLAMT. OBJECTIVE OF 1972 AMENDMENT OF LAW WAS TO MAKE IT POSSIBLE
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FOR KARTELLAMT TO BE MORE EFFECTIVE. HOWEVER, KARTELLAMT

SEEMS TO BE HAVING AS MUCH TROUBLE AS BEFORE, PERHAPS BECAUSE OF DIFFICULTY IN PROVING MARKET DOMINATION UNDER COMPLEX NEW FORMULA INVOLVING NOT ONLY COMPUTATION OF MARKET SHARE BUT ALSO FINANCIAL ASSETS, ACCESS TO MARKETS FOR PROCUREMENT AND DISTRIBUTION, INTERLOCKING ARRANGEMENTS WITH OTHER FIRMS, AND RESTRICTIONS ON ACCESS BY NEWCOMERS TO MARKET. FOR EXAMPLE, KARTELLAMT CAN OBTAIN LOCAL DATA AFFECTING OIL PRICES BUT HAS NO WAY OF CHECKING ASSERTIONS CONCERNING PRICE IMPACT OF ACTIVITIES OF OIL COMPANIES OUTSIDE FRG. KARTELLAMT ALLEGED THAT BP, TEXACO, ARAL, ESSO, AND SHELL, HAVING COMBINED MARKET SHARE OF 75 9/9, WERE TAKING UNDUE ADVANTAGE OF THEIR MARKET POWER. PRICES ACTUALLY CHARGED ARE SUPPOSED TO BE COMPARED WITH PRICE UNDER CONDITIONS OF SUBSTANTIAL COMPETITION. PREFERRED TECHNIQUE IS TO FIND PRICE IN COMPARABLE MARKET BUT, SINCE THERE IS NO COMPARABLE MARKET FOR GASOLINE, KARTELLAMT IS USING "SOCKET THEORY" WHEREBY PAST PRICES ARE ASSUMED TO BE BASED ON SUBSTANTIAL COMPETITION AND ARE ADJUSTED TO REFLECT COST INCREASES.

4. CRITICS CHARGE THAT PRICE CONTROL ACTIVITIES OF KARTELLAMT DO NOT FURTHER OBJECTIVE OF ASSURING COMPETITIVE CONDITIONS. BUSINESSMEN FEAR PRICE CONTROLS WOULD BE FOLLOWED BY PROFIT AND INVESTMENT CONTROLS. ECONOMICS MINISTRY AND KARTELLAMT HAVE REPLIED THAT WHERE COMPETITION IS RESTRICTED, HIGH PRICES ARE NOT MISUSE OF MARKET POWER PER SE BUT INDICATE POSSIBLE MISUSE. KLEIN

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: GASOLINE, AGREEMENTS, PETROLEUM INDUSTRY, PRICES, MEETINGS
Control Number: n/a
Copy: SINGLE
Draft Date: 14 JUN 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974BERLIN01009
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740155-0699
From: BERLIN
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740646/aaaabnac.tel
Line Count: 88
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EB
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 2
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: A. STATE 111877 B. BERLIN 681
Review Action: RELEASED, APPROVED
Review Authority: shawdg
Review Comment: n/a
Review Content Flags:
Review Date: 21 AUG 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <21 AUG 2002 by PhilliRO>; APPROVED <16 JAN 2003 by shawdg>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: BUNDESKARTELLAMT ACTIONS AGAINST OIL COMPANIES
TAGS: ECON, ENRG, GE
To: STATE BONN
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005